

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH C. TUCKER and U.S. POSTAL SERVICE,
SEMINOLE STATION, Tampa, Fla.

*Docket No. 97-1761; Submitted on the Record;
Issued March 3, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that his alleged cervical, shoulder and headache conditions were sustained in the performance of duty.

On March 12, 1996 appellant, a 42-year-old distribution clerk, filed a Form CA-2 claim for benefits based on occupational disease. Appellant alleged that he had experienced pain and numbness in his neck and shoulders, in addition to constant headaches and that these conditions were caused by engaging in his regular duties as a clerk. These duties included working on a computer, completing notices and checking carriers. In a statement received by the Office of Workers' Compensation Programs on April 23, 1996, appellant asserted that since November 18, 1994, he had not been able to work for more than approximately four hours per day. Appellant stated that the constant looking up and down, and the constant use of his arms and hands were causing headaches and pain in his neck and shoulders.

Appellant subsequently submitted a March 26, 1996 report from Dr. Edward N. Feldman, a specialist in orthopedic surgery. Dr. Feldman stated that during the course of appellant's employment with the employing establishment, he began to experience neck pain, headaches and ringing in both ears in 1985, which have become progressively worse and that he now experienced headaches on a daily basis. He stated that appellant also experienced cramping in both thumbs and both index fingers as well as numbness and tingling of both shoulders and arms and fingers. Dr. Feldman diagnosed greater occipital neuralgia, chronic cervical sprain, tendinitis, carpal tunnel syndrome and herniated cervical disc.

By letter dated May 29, 1996, the Office advised appellant that the evidence he submitted was not sufficient to determine whether he was eligible for compensation benefits, and that he needed to submit a detailed description of the specific employment-related conditions or incidents he believed contributed to his alleged conditions. The Office also asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and

the medical reasons for his condition, and an opinion as to whether specific employment factors at his employing establishment contributed to or aggravated his conditions.

In response to the Office's letter, Dr. Feldman submitted a medical report dated July 5, 1996. In this report Dr. Feldman stated,

"[Appellant] has a job which requires repetitive use of his hands and upper extremities. Thus, his work has progressively caused his condition to deteriorate. There is no specific precipitating cause, however, all of his conditions have been permanently aggravated by his employment and, therefore, should be considered compensable.... He also has developed pain in his neck as a result of having to hold his neck in one position continuously."

By letters dated September 10, 1996, the Office scheduled a second opinion evaluation for appellant with Dr. Frank Kriz, a Board-certified orthopedic surgeon, in order to determine whether appellant's current conditions were caused by factors of his employment.

Dr. Kriz examined appellant on September 16, 1996, and in a medical report dated September 16, 1996, he reviewed appellant's medical records and a statement of accepted facts and indicated findings on examination. He stated based on x-ray results that appellant had preexisting degenerative disc disease of long-term remote origin at the C5-6 and C6-7 levels which was quite advanced. Dr. Kriz further stated, however, that appellant did not have any current objective examination findings that could be directly attributed to his light duty, four hour per day work at the employing establishment and had sustained no aggravation of his cervical disc disease, either temporary or permanent.

Dr. Kriz advised that the reason there was no evidence of clinical aggravation was because the x-ray findings indicated long-term stability of the degenerative levels, and because there were no objective physical or neurologic examination findings indicating any evidence of nerve root impingement or neuropathy. He stated that the examination of the cervical spine and upper extremities was clinically and objectively normal, and that any present complaints involving the neck, shoulder and upper extremity were subjective and not manifested by objective examination findings. Dr. Kriz advised that he found nothing that should have prohibited appellant from working since March 1996.

Dr. Kriz concluded that there was no evidence of current disability in appellant's neck, shoulders and upper extremities causally related to any work status at the employing establishment and no evidence of disability associated with the preexisting degenerative disc disease in the cervical spine and that appellant was fit to work a full eight-hour day.

By decision dated October 7, 1996, the Office denied appellant's claim on the grounds that the claimed medical conditions were not causally related to specific factors or incidents of employment.

By letter dated March 14, 1997, appellant, through his representative, requested reconsideration of the Office's previous decision. In support of his request, appellant submitted a November 15, 1996 magnetic resonance imaging (MRI) scan report from Dr. Francisco

Menendez, a Board-certified radiologist, and a December 13, 1996 report from Dr. Feldman. Dr. Menendez found based on the MRI results that appellant had narrowing of the cervical disc and desiccation at C5-6, and diagnosed a central herniation and desiccation of the disc at C6-7. In his December 13, 1996 report, Dr. Feldman stated that appellant had developed his conditions of numbness and tingling in the arms and fingers, neck pain and headaches over the course of time during his employment and that all of the symptoms “appear to be job-related.” He stated that the November 15, 1996 MRI results confirmed that appellant had a herniated disc at C6-7 which was “definitely” a result of his injuries on the job. Dr. Feldman opined that appellant was 100 percent disabled from gainful employment.

By decision dated April 9, 1997, the Office found that the evidence appellant submitted on reconsideration was not sufficient to warrant modification of its previous decision.

The Board finds that appellant did not meet his burden of proof to establish that his alleged cervical, shoulder and headache conditions were sustained in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition, for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In the present case, the only probative and rationalized medical evidence bearing on causal relationship was the September 16, 1996 medical report of Dr. Kriz. Based on the results of his examination, review of the medical record and x-ray results, Dr. Kriz stated that there were no objective physical or neurologic examination findings manifesting any evidence of nerve root impingement or neuropathy. He stated that the examination of the cervical spine and upper extremities was clinically and objectively normal, and that any present complaints involving the neck, shoulder and upper extremity were subjective and not manifested by objective examination findings. Dr. Kriz found no evidence of current disability to the neck, shoulders and upper extremities causally related to any work status at the employing establishment, that appellant was able to work an eight hour day, and that he did not suffer from any disability associated with his preexisting degenerative disc disease in the cervical spine.

In contrast, the only medical evidence appellant submitted in support of his claim were the March 26, July 5 and December 13, 1996 reports of Dr. Feldman, none of which provided a rationalized probative medical opinion indicating that appellant's neck, shoulder and headache conditions were causally related to employment factors or conditions. He stated in his July 5, 1996 report that appellant's job required repetitive use of his hands and upper extremities and that, therefore, his work progressively caused his condition to deteriorate. Dr. Feldman also advised that appellant had developed neck pain as a result of having to hold his neck in one position continuously. He further stated, however, that there was no specific precipitating cause, and summarily concluded that all of appellant's conditions were permanently aggravated by his employment and, therefore, should be considered compensable. In his December 13, 1996 report, Dr. Feldman stated that appellant had developed his conditions of numbness and tingling in the arms and fingers, neck pain and headaches over the course of time during his employment, and that all of these symptoms "appear to be job-related." He also opined that appellant's herniated disc at C6-7, as confirmed by the November 15, 1996 MRI results, was "definitely" attributable to his employment injuries and that he was totally disabled from gainful employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence. Dr. Feldman's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.⁶ He did not explain the process through which factors of appellant's employment would have been competent to cause

⁴ *Id.*

⁵ *See Id.*

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

the claimed neck, shoulder and headache conditions. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only stated summarily that appellant's conditions were causally related to his employment duties and that his symptoms appeared to be employment related.

Accordingly, as the only probative, rationalized medical opinion of record was that of Dr. Kriz, who rejected any causal relationship between appellant's claimed conditions and factors or incidents of employment, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated April 7, 1997 and October 7, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 3, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member